

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DARRYL GREEN</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 255,742
<b>VARSITY CONTRACTORS INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>FREMONT COMPENSATION</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge John D. Clark on April 2, 2002.

**Issues**

Claimant's Brief on Appeal of Preliminary Order states: "This case comes before the Board on the issue of authorized medical treatment. Claimant has received medical care to date from the authorized treating physician, Bernard T. Poole, M.D. Dr. Poole has recommended additional testing, which the Court, in its order, of April 2, 2002, denied." <sup>1</sup> Thus, the only issue is whether claimant is entitled to the testing recommended by the authorized treating physician. There is no issue concerning the compensability of the claim.

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<sup>1</sup> Claimant's Brief on Appeal of Preliminary Order, p. 1 (filed April 24, 2002).

**Findings of Fact and Conclusions of Law**

After reviewing the record and considering the arguments, the Appeals Board (Board) concludes it does not have jurisdiction at this point in the proceedings to determine the issue raised, and the appeal should be dismissed.

The Board concludes, as argued by respondent, that the appeal does not raise a jurisdictional issue. K.S.A. 44-534a lists jurisdictional issues. Whether certain medical treatment is or is not reasonably necessary is not one of the issues listed. Where other jurisdictional prerequisites are met, including notice, timely written claim, and accident arising out of and in the course of employment, the Administrative Law Judge (ALJ) has jurisdiction to determine whether the medical treatment should be ordered paid by respondent. The ALJ's decision on this question is not subject to review at this stage of the proceedings.

It is noted that claimant argues Judge Clark refused to permit claimant a hearing on this matter. There is no transcript of a proceeding. But in his brief to the Board, claimant acknowledges that he appeared through his attorney and was not personally present for the April 2, 2002 preliminary hearing and that no witnesses were called to testify. Instead, claimant states that his attorney offered as an exhibit the April 30, 2001 office note of Bernard T. Poole, M.D., which concluded: "In view of this patient's return and indeed, alleged increase in symptoms, I think we should proceed with an open MRI of the lumbar spine and pelvis and this should be scheduled." Respondent disputes that this report is in evidence, that it was considered by Judge Clark and that it is the record on appeal. The Brief of Appellee Respondent and Insurance Carrier states:

The preliminary hearing was conducted in front of Administrative Law Judge John Clark, however, no record was taken. Even after claimant became aware that Judge Clark was going to deny the requested benefits, he did not request a record. Further, claimant has attached exhibits to his brief which were never admitted into evidence, a medical report from Dr. Poole that is over one year old.<sup>2</sup>

Given that claimant is requesting medical benefits in a case where compensability of the claim is not at issue, the Board perceives no reason to remand this case to the ALJ

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<sup>2</sup> Brief of Appellee Respondent and Insurance Carrier, p. 3 (filed May 2, 2002).

for clarification of the record. Moreover, it is appellant's burden to see that a record is made.<sup>3</sup>

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of the Order entered by Administrative Law Judge John D. Clark on April 2, 2002, should be, and the same is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July 2002.

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BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant  
P. Kelly Donley, Attorney for Respondent and Insurance Carrier  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director

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<sup>3</sup> See Plummer Development, Inc. V. Prairie State Bank, 248 Kan. 664, Syl.¶ 4, 809 P.2d 1216 (1991); Martin v. Bob Berkamp Construction Co., WCAB Docket No. 201,144 (Dec. 1995); Evans v. Boeing Military Airplanes, WCAB Docket No. 179,663 (Nov. 1995).